

TTAB

76202038
UNITED STATES PATENT AND TRADEMARK
OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: November 18, 2005

LIFEGEAR, INC.

11639 Goldring Road
Arcadia, CA 91006

Cancellation No. 92045166
Reg. No. 2693944

James P. Broder
THE LAW OFFICE OF STEVEN G. ROEDER
5560 Chelsea Avenue
La Jolla, CA 92037

Earthlite Massage Tables, Inc.

V.

LIFEGEAR, INC.

Helen Johnson, Legal Assistant

A petition, a copy of which is attached, has been filed to cancel the above-identified registration.

Proceedings will be conducted in accordance with the Trademark Rules of Practice.

ANSWER IS DUE FORTY DAYS after the mailing date hereof.
(See Trademark Rule 2.196 for expiration date falling on Saturday, Sunday or a holiday).

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. The parties are reminded of the recent amendments to the Trademark Rules that affect the rules of practice before the TTAB. See Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act, 68 Fed. R. 55,748 (September 26, 2003) (effective November 2, 2003); Reorganization of Correspondence and Other Provisions, 68 Fed. Reg. 48,286 (August 13, 2003) (effective September 12,



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2003). Notices concerning the rules changes, as well as the *Trademark Trial and Appeal Board Manual of Procedure* (TBMP), are available at www.uspto.gov/web/offices/dcom/ttab/.

The parties are particularly referred to Trademark Rule 2.126 pertaining to the form of submissions. Paper submissions, including but not limited to exhibits and depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.

Discovery and testimony periods are set as follows:

Discovery period to open: December 08, 2005

Discovery period to close: June 06, 2006

30-day testimony period for party
in position of plaintiff to close: September 04, 2006

30-day testimony period for party
in position of defendant to close: November 03, 2006

15-day rebuttal testimony period
for plaintiff to close: December 18, 2006

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

NOTE: The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the *Official Gazette* notice titled "Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board," 1235 TMOG 68 (June 20, 2000). The notice is available at <http://www.uspto.gov>. Interlocutory matters which the

Board agrees to discuss or decide by phone conference may be decided adversely to any party which fails to participate.

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.

New Developments at the Trademark Trial and Appeal Board

TTAB forms for electronic filing of extensions of time to oppose, notices of opposition, and inter partes filings are now available at <http://estta.uspto.gov>. Images of TTAB proceeding files can be viewed using TTABVue at <http://ttabvue.uspto.gov>.

TTAB

VIA EXPRESS MAIL

Label No. EQ 163516836 US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Registration No. 2,693,944/76202038

Date of Issue: March 4, 2003

EARTHLITE MASSAGE TABLES, INC.,
a California corporation,

Petitioner,

v.

LIFEGEAR, INC., a New Jersey corporation,
dba EARTHGEAR,

Defendant.

Cancellation No.:

To: United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

TRANSMITTAL OF PETITION FOR CANCELLATION

Enclosed are:

(1) An original and one duplicate copy of a Petition for Cancellation on behalf of Petitioner, EARTHLITE MASSAGE TABLES, INC. (hereinafter "Petitioner") with respect to the mark, Registration No. 2,693,944, issued March 4, 2003, of LIFEGEAR, INC., for goods in International Class 10 set forth as:



"MASSAGE APPARATUS, NAMELY, MASSAGE TABLES, MASSAGE CHAIRS, AND MASSAGE PADS THAT ARE COMPONENT PARTS OF MASSAGE TABLES AND CHAIRS; NON-ELECTRIC MASSAGE PADS FOR THERAPEUTIC MEDICAL USE; THERAPEUTIC SAUNAS, NAMELY STEAM SAUNA BOOTHS" and for goods in International Class 11 set forth as "SAUNAS, NAMELY, STEAM SAUNA BOOTHS"; and

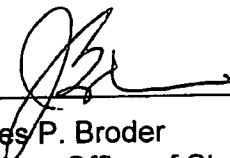
(2) A check for \$600.00 for the filing fee for the instant Petition for Cancellation for two classes of goods.

If for any reason the Patent and Trademark Office filing fee should exceed \$600.00, please charge any additional sums to Deposit Account No. 501141.

Dated: November 3, 2005

Respectfully submitted,
Earthlite Massage Tables, Inc.

By: _____

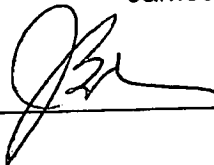

James P. Broder
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Date of Mailing: November 3, 2005
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Printed Name: James P. Broder

Signature: _____



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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No. 2,693,944

Date of Issue: March 4, 2003

EARTHLITE MESSAGE TABLES, INC.,
a California corporation,

Petitioner,

v.

LIFEGEAR, INC., a New Jersey corporation,
dba EARTHGEAR,

Defendant.

**PETITION FOR
CANCELLATION**

Cancellation No.:

PETITION FOR CANCELLATION

Petitioner, EARTHLITE MESSAGE TABLES, INC., a California corporation having its principle place of business at 3210 Executive Ridge Road, Vista, California, 92083 (hereinafter "Petitioner"), believes that it was, is being and will continue to be damaged by Registration No. 2,693,944, issued March 4, 2003, to Defendant, LIFEGEAR, INC., a New Jersey corporation having an office at 9858 Baldwin Place, El Monte, California, 91731, for the word mark "EARTHGEAR", namely in International Class 10 for goods designated as "MESSAGE APPARATUS, NAMELY, MESSAGE TABLES, MESSAGE CHAIRS, AND MESSAGE PADS THAT ARE COMPONENT PARTS OF MESSAGE TABLES AND CHAIRS; NON-ELECTRIC MESSAGE PADS FOR

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THERAPEUTIC MEDICAL USE; THERAPEUTIC SAUNAS, NAMELY STEAM SAUNA BOOTHS" and in International Class 11 for goods designated as "SAUNAS, NAMELY STEAM SAUNA BOOTHS", both claiming first use on September 6, 2002.

As grounds for this Petition, it is alleged that:

1. Petitioner is the owner of U.S. Trademark Registration No. 2,238,613 for the mark "EARTHLITE" and a stylized globe design, for massage tables in International Class 10, which was registered on April 13, 1999. This registration was based on an application filed in the U.S. Patent and Trademark Office on January 15, 1998, which claims a date of first use in commerce of not later than October 31, 1987. The registration date, the filing date and the date of first use of Petitioner's mark are prior to the date of filing of defendant's application, and prior to the date of defendant's claimed first use. Petitioner's registered mark is valid and subsisting and is conclusive evidence of petitioner's exclusive right to use said mark in commerce on the goods specified in said registration.

2. Petitioner, since at least October 31, 1987, has been, and is now, using the mark EARTHLITE in connection with the sale of massage tables and other massage and therapeutic related products. Said use has been valid and continuous since said date of first use and has not been abandoned. Said mark EARTHLITE of Petitioner is symbolic of extensive good will and consumer recognition built up by Petitioner through substantial amounts of time and effort in advertising and promotion. In view of the similarity of the respective marks and the related nature of the goods of the respective parties, it is alleged that defendant's registered mark so resembles Petitioner's mark EARTHLITE previously used in the United States, and not abandoned, as to be likely to cause confusion, or to cause mistake or to deceive.

3. Petitioner is the owner of U.S. Trademark Registration No. 2,508,704 for the mark "EARTHLITE WORLD'S #1 BRAND IN MASSAGE" and a stylized globe design, for massage tables in International Class 10, which was registered on November 20, 2001. This registration was based on an application

filed in the U.S. Patent and Trademark Office on November 2, 1999, which claims a date of first use in commerce of not later than October 26, 1999. The registration date, the filing date and the date of first use of Petitioner's mark are prior to the date of filing of defendant's application, and prior to the date of defendant's claimed first use. Petitioner's registered mark is valid and subsisting and is at least prima facie evidence of petitioner's exclusive right to use said mark in commerce on the goods specified in said registration.

4. Petitioner, since at least October 26, 1999, has been, and is now, using the mark EARTHLITE WORLD'S #1 BRAND IN MASSAGE in connection with the sale of massage tables and other massage and therapeutic related products. Said use has been valid and continuous since said date of first use and has not been abandoned. Said mark EARTHLITE WORLD'S #1 BRAND IN MASSAGE of Petitioner is symbolic of extensive good will and consumer recognition built up by Petitioner through substantial amounts of time and effort in advertising and promotion. In view of the similarity of the respective marks and the related nature of the goods of the respective parties, it is alleged that defendant's registered mark so resembles Petitioner's mark EARTHLITE WORLD'S #1 BRAND IN MASSAGE previously used in the United States, and not abandoned, as to be likely to cause confusion, or to cause mistake or to deceive.

5. Petitioner, since at least October 1987, has been, and is now, operating under a designation that includes "EARTHLITE", such as Earthlite Massage Tables, Inc., in the area of massage tables, massage chairs and numerous other massage-related products. Said use has been valid and continuous since said date of first use and the relevant class of the public has come to associate Petitioner with said designation. In view of the similarity of defendant's registered mark with Petitioner's designation, and in view of the related nature of the uses therefor, it is alleged that defendant's registered mark consists of and comprises matter which may disparage and falsely suggest a connection with Petitioner.

WHEREFORE, Petitioner prays that Registration No. 2,693,944 be canceled and that this Petition for Cancellation be sustained in favor of Petitioner.

Petitioner hereby appoints The Law Office of Steven G. Roeder, a law firm composed of attorneys Steven G. Roeder and James P. Broder, whom are each a member of the bar of the State of California and registered before the U.S. Patent and Trademark Office, to act as attorneys for Petitioner herein, with full power to prosecute said Petition, to transact all relevant business with the Patent and Trademark Office and in the United States Courts and to receive all official communications in connection with this Petition for Cancellation.

Dated: November 3, 2005

Respectfully submitted,
Earthlite Massage Tables, Inc.

By: 

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Attorneys for Petitioner,
Earthlite Massage Tables, Inc.

Certificate of Mailing by "Express Mail"

I hereby certify that this correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service addressed to: United States Patent and Trademark Office, Trademark Trial and Appeal Board, P.O. Box 1451, Alexandria, VA 22313-1451 on:

Date of Mailing: November 3, 2005
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Signature: 